

## **REMARKS**

Entry of the foregoing amendments is respectfully requested.

### **Summary of Amendments**

By the foregoing amendments claims 1-11, 13, 14 and 17-20 are cancelled and claims 21-46 are added, whereby claims 21-46 will be pending, with claims 21 and 37 being independent claims.

Support for the new claims can be found throughout the present specification and in particular, the original claims and page 3 of the specification.

Applicants emphasize that the cancellation of claims 1-11, 13, 14 and 17-20 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

### **Summary of Office Action**

Claims 17-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 14 is rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 1-11, 13 and 17-20 are rejected under 35 U.S.C. § 103(a) as allegedly being

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unpatentable over WO 97/42922 (hereafter "WO'922") in view of U.S. Patent No. 5,681,301 to Yang et al. (hereafter "YANG").

### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

#### ***Response to Rejection of Claims under 35 U.S.C. § 112, Second Paragraph***

Claims 17-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the rejection alleges that claim 17 uses closed language (consisting essentially of) in the claim preamble, but uses open ended language for defining each of the elements which make up the claimed structure, thereby creating a claim which allegedly is confusing.

Applicants submit that the set of new claims submitted herewith does not comprise any claim which corresponds to claim 17, wherefore this rejection is moot. However, Applicants fail to see why a claim which uses closed-ended language for defining the elements of a certain structure and open-ended language to further define the elements themselves is confusing.

#### ***Response to Rejection of Claims under 35 U.S.C. § 112, First Paragraph***

Claim 14 is rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. The rejection essentially alleges that the

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term “nonadhesive” used in conjunction with the metallocene-polyethylene nonwoven recited in claim 14 does not find support in the application as originally filed.

Applicants respectfully traverse this rejection. Initially, it is noted that claim 14 is cancelled. However, dependent claim 34 submitted herewith contains the term “nonadhesive” as well. In this regard, it is noted that, at page 5, lines 19-20 of the present specification it is stated that “the nonwoven that has been treated to make it self-adhesive can also be employed with outstanding effect as an adhesive tape”. If an object is treated to make it self-adhesive this can only mean that prior to the treatment the object lacked this property because otherwise the treatment would be superfluous. If the object (here: the nonwoven) is not self-adhesive *per se*, but has to undergo a treatment to become self-adhesive, it is clearly justified to qualify the object as nonadhesive, which is exactly the term that is used in claim 34 (and in cancelled claim 14).

For at least the foregoing reason, the rejection under 35 U.S.C. §112, first paragraph, is unwarranted and should be withdrawn, which action is respectfully requested.

***Response to Rejection of Claims under 35 U.S.C. § 103(a)***

Claims 1-11, 13 and 17-20 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over WO'922 in view of YANG. In this regard, the Office Action refers to the reasons set forth in the Office Action of April 19, 2005. In the previous Office Action it was asserted that WO'922 discloses a genus of adhesive coated bandages which feature nonwoven fabrics that may be formed of polyethylene fibers and may further be coated with a suitable adhesive layer such as a pressure sensitive adhesive composition. The Office

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Action conceded that WO'922 fails to disclose the presence of a metallocene-polyethylene genus of fibers as forming the non-woven backing, but alleged that in col. 2, lines 55-67 YANG discloses the use of metallocene-polyethylene fiber containing materials having a wide variety of diverse embodiments such as in sheet, film, web and the like form which can include being coated with an adhesive. Based on this (incorrect) reading of YANG, the Examiner took the position that "one of ordinary skill, motivated by the desirable properties possessed by metallocene type polymerized polyethylene fiber fabrics would so incorporate this technology from Yang et al. into the backing material of WO'922 and thereby form the claimed genus of embodiments". Office Action mailed April 26, 2005, page 4.

Applicants respectfully disagree with the Examiner in this regard. Initially, it is noted that the base sheet of the adhesive bandage of WO'922 comprises three essential components, i.e., (i) a film laminated on (ii) a thermoplastic fiber fabric and (iii) an adhesive layer set on a surface of the thermoplastic fiber fabric (see, e.g., page 3, lines 7-11, Example 1, as well as page 17 in combination with Figures 3-6 of WO'922).

According to page 4, lines 16-35 of WO'922:

The thermoplastic fiber fabric used in the present invention includes woven fabrics and nonwoven fabrics made of thermoplastic elastomers. The reason the fiber fabric must be made of a thermoplastic elastomer is that the fiber fabric must melt and be pressed by pressure and heat to give the bandage a water-proofing property when heat-sealed. Also such fiber fabric preferably has gas permeability and elasticity.

The thermoplastic elastomer can be, for example, polystyrene type elastomers such as styrene-isoprenestyrene type block copolymer and hydrogenated block copolymers made by hydrogenating said block copolymer, polyurethanes, polyesters, polyolefines such as polyethylene, and mixtures thereof; they are, however, not critical. The fabric of the present invention can be either a woven fabric or a nonwoven fabric, but the nonwoven fabric is preferred because the

directional dependency of physical properties such as elasticity is low.

Emphasis added. Further, according to the passage from page 5, line 25 to page 6, line 7 of WO'922:

The film to laminate the fiber fabric in this invention is used to impart water proofing property to the adhesive bandage without much decrease in gas permeability and water vapor permeability of the fiber fabric as well as to ensure a suitable balance of properties when an adhesive bandage is made. The material of the film is required to have a water proofing property and to have sufficient water vapor permeability even after being laminated to a fiber fabric. As such films, known films made of polyurethanes, polyvinyl chloride, polyvinylidene chloride, polyolefines such as polyethylene and polypropylene, polyesters, polyamides and so forth can be used. Polyurethane films and polyester films in particular are preferred among them.

Emphasis added. In Example 1 of WO'922, a polyurethane film is laminated by heat fusion to one surface of a non-woven fabric which is made by melt-blown spinning of a hydrogenated styrene-isoprene-styrene block copolymer with a styrene content of 27% by weight.

According to the Examiner, "one of ordinary skill, motivated by the desirable properties possessed by metallocene type polymerized polyethylene fiber fabrics would so incorporate this technology from Yang et al. into the backing material of WO'922 and thereby form the claimed genus of embodiments".

In other words, it apparently is the Examiner's position that, motivated by the disclosure of YANG which allegedly teaches favorable properties possessed by metallocene type polymerized polyethylene fiber fabrics, one of skill in the art would use metallocene-polyethylene as material for the (woven or) nonwoven fabric of WO'922 (which is to be heat-laminated to a film) instead of the various exemplary polymers

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mentioned in WO'922, although WO'922 explicitly teaches that the exact type of the thermoplastic elastomer used for this purpose is not critical.

Further, while the rejection alleges that YANG discloses the use of metallocene-polyethylene fiber containing materials having a wide variety of diverse embodiments such as in sheet, film, web and the like form, Applicants are unable to find in YANG any reference to fibers or fiber containing materials. In this regard, the Examiner may have been misled by the term "web" which is used in YANG and would appear to indicate some kind of woven (fibrous) material. However, not only does YANG not mention any fibers or fibrous materials which would be needed for a typical web, but YANG also defines what a "web" in the context of the disclosure of YANG is, i.e., a polymeric film having apertures. See, e.g., col. 2, lines 55-56 and col. 3, lines 11-12, 20-22, and 31-33.

The polymeric apertured film of YANG clearly is different from, and not comparable to a nonwoven material of thermoplastic elastomer which may be used according to WO'922. In terms of structure, the film of YANG bears some resemblance to the film that is to be heat-laminated to the nonwoven material of WO'922. However, WO'922 makes it clear that polyester films and polyurethane films are preferred for this purpose (see above). Accordingly, there is no motivation whatsoever to employ the material used for the apertured film of YANG as material for a nonwoven material of the base sheet of WO'922.

Further, even if one were to assume, *arguendo*, that YANG discloses favorable properties of fiber materials made of metallocene-polyethylene (which is clearly not the case), there would be no motivation to use a metallocene-polyethylene for a nonwoven material comprised in the base sheet of WO'922. In particular, one of skill in the art will recognize that since the nonwoven of WO'922 is laminated to a film, the elastic and other

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properties of the composite consisting of the film and the nonwoven will be determined not only by the corresponding properties of the nonwoven, but also by the corresponding properties of the film. In other words, even if the nonwoven had extremely satisfactory (elastic) properties, these properties would likely be "diluted" by the simultaneous presence of the film laminated thereto.

This is illustrated by the fact that according to YANG, the apertured film disclosed therein is flexible and has an elasticity accommodating a stretch elongation of at least 50% with a recovery of at least 65% (col. 3, lines 30-35). In other words, after an elongation of 50%, the film of YANG (made of metallocene-polyethylene) is to show a permanent plastic deformation of not more than 35% (which apparently is considered by YANG to be a very satisfactory value). This value is to be compared with the permanent plastic deformation of only 22% which is obtained after five times elongating by 50 % the control nonwoven described in the present application (made of LLDPE; see top of page 6 and table and lines 11-14 of page 7 of the present application).

Thus, even a nonwoven made of a conventional polymer such as LLDPE is able to exhibit the same or even better elastic properties than the apertured polymer film made of metallocene-polyethylene of YANG. This is an additional reason why employing a metallocene-polyethylene nonwoven (to be laminated to a polymer film) in the case of WO'922 would not appear to be associated with any particular advantage .

Applicants submit that for at least all of the reasons set forth above, WO'922 in view of YANG does not render obvious the subject matter of any of the present claims. Accordingly, the rejection under 35 U.S.C. § 103(a) is unwarranted, wherefore withdrawal thereof is respectfully requested.

**CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
Dirk LENZ et al.

A handwritten signature in cursive script, appearing to read "Greenblum", followed by a horizontal dashed line.

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